



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/620,803

06/30/2003

Charles R. Reeves JR.

13768.783.44

8460

47973

7590

07/28/2008

WORKMAN NYDEGGER/MICROSOFT

1000 EAGLE GATE TOWER

60 EAST SOUTH TEMPLE

SALT LAKE CITY, UT 84111

EXAMINER

CHRISTENSEN, SCOTT B

ART UNIT

PAPER NUMBER

2144

MAIL DATE

DELIVERY MODE

07/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/620,803

Applicant(s)

REEVES ET AL.

Examiner

Scott Christensen

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15, 17-28, 30-34 and 37-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-13, 15, 17-28, 30-34 and 37-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in regards to the most recent papers filed on 5/6/2008.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 17-23, 25-28, 30-33, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murto et al. in US Patent Application Publication US 2004/0213409 A1, hereafter referred to as "Murto" in view of Nielsen in US 6,510,461, hereafter referred to as "Nielsen."

With regard to claim 1, Murto discloses in a computing environment, a method comprising:

receiving a plurality of access points to distributed services that match specified criteria, the access points provided by a service registry (Murto: Paragraph [0158] and [0159]);

maintaining the plurality of access points in a cache (Murto: Paragraph [0169]);

receiving a request from a program to provide an access point (Murto: Paragraphs [0155] and [0169]); and

in response to the request, selecting a first access point from the cache and returning data corresponding to the access point to the program (Murto: Paragraphs [0159] and [0165]); and

upon receiving information from the program that a distributed service corresponding to the first access point has failed, selecting a second access point from the cache and returning data corresponding to the second access point to the program (Murto: Paragraph [0081]).

However, Murto does not disclose expressly marking the first access point corresponding to the failed distributed service such that the first access point is not subsequently selected from the cache.

However, Nielsen discloses that if an access point (URL) cannot be retrieved successfully in three attempts, the URL is marked as Pending, and no further attempt is made to retrieve the URL for a certain time interval, such as 24 hours (Nielsen: Column 17, lines 10-21).

Thus, it would have been obvious to combine the marking of Nielsen with the disclosure of Murto.

The suggestion/motivation for doing so would have been that if an access point is disabled, further attempts to reconnect can be minimized by marking the access point as failed. This can either be used to not use the cached access point again or utilize the cached access point only after a certain period of time in order to give the access point time to become operational. This allows the client to not waste resources attempting to access an access point that is clearly disabled.

With regard to claim 2, Murto as modified by Nielsen teaches receiving the specified criteria from the program, and sending a query to the service registry based on the criteria (Murto: Paragraphs [0155] to [0158]).

With regard to claim 3, Murto as modified by Nielsen teaches receiving the plurality of access points from the service registry in response to the query (Murto: Paragraph [0159]).

With regard to claim 4, Murto as modified by Nielsen teaches that the service registry comprises a UDDI-based registry, and wherein the sending the query to the service registry comprises sending a UDDI find request (Murto: Paragraph [0158]).

With regard to claim 5, Murto as modified by Nielsen teaches that the plurality of access points is provided by the service registry in a list of URLs, and wherein returning data corresponding to the access point comprises returning data comprising a URL (Murto: Paragraph [0144]).

With regard to claim 6, Murto as modified by Nielsen teaches that returning data corresponding to the access point comprises returning a network address of a computer system (Murto: Paragraph [0144]. A URL is considered to be a type of network address.).

With regard to claim 7, Murto as modified by Nielsen teaches that returning data corresponding to the access point comprises returning an identifier that can be resolved by some mechanism to an application or a particular instance of an application (Murto: Paragraph [0144]. A URL is an identifier that can be resolved.).

With regard to claim 8, Murto as modified by Nielsen teaches that receiving a request from a program for an access point comprises receiving a call at a defined interface (Murto: Paragraph [0043]. Any network communication that is received involves receiving some call at some interface (e.g. the network interface).).

With regard to claim 9, Murto as modified by Nielsen teaches that selecting the access point from the cache comprises maintaining the access points in an ordering (Murto: Paragraph [0159]. As a list is returned, there is some order, even if the order is not according to any particular rule.), and choosing the access point based on the ordering (Murto: Paragraph [0022]).

With regard to claim 10, Murto as modified by Nielsen teaches basing the ordering on data received from the program (Murto: Paragraph [0022]).

With regard to claim 17, Murto as modified by Nielsen teaches that outputting failure comprises communicating with an error handling service (Murto: paragraph [0081]).

With regard to claim 18, Murto as modified by Nielsen teaches collecting failure information at the error handling service (Murto: Paragraph [0081]).

With regard to claim 19, Murto as modified by Nielsen teaches receiving information that a distributed service has failed comprises receiving a call at a defined interface (Murto: Paragraph [0081]).

With regard to claim 20, Murto as modified by Nielsen teaches a computer readable medium having computer-executable instructions for performing the method of claim 1 (Murto is a computer implemented system, so it inherently has some computer readable medium with some instructions for performing the method of claim 1.).

With regard to claim 21, the instant claim is substantially similar to subject matter presented in claim 1, and is rejected for substantially similar reasons.

With regard to claim 22, Murto as modified by Nielsen teaches that the manager component comprises an instantiated object (Murto: Paragraphs [0154-0168]). The

server, which performs many of the functions of the manager component, comprises an instantiated object, as the server, and modules within the server, exists.).

With regard to claim 23, the instant claim is substantially similar to subject matter presented in claim 5, and is rejected for substantially similar reasons.

With regard to claim 25, Murto as modified by Nielsen teaches that the manager component is coupled to the client program via a defined interface that receives the request for the access point (Murto: Figure 6. The server receives information via the network.).

With regard to claim 26, the instant claim is substantially similar to subject matter presented in claim 4, and is rejected for substantially similar reasons.

With regard to claim 27, the instant claim is substantially similar to subject matter presented in claims 2 and 3, and is rejected for substantially similar reasons.

With regard to claim 28, the instant claim is substantially similar to subject matter presented in claim 4, and is rejected for substantially similar reasons.

With regard to claim 30, the instant claim is substantially similar to subject matter presented in claim 9, and is rejected for substantially similar reasons.

With regard to claim 31, the instant claim is substantially similar to subject matter presented in claim 19, and is rejected for substantially similar reasons.

With regard to claim 32, the instant claim is substantially similar to subject matter presented in claim 14, and is rejected for substantially similar reasons.

With regard to claim 33, the instant claim is substantially similar to subject matter presented in claim 18, and is rejected for substantially similar reasons.

With regard to claim 37, the instant claim is substantially similar to subject matter presented in claims 1-3, and is rejected for substantially similar reasons.

With regard to claim 38, the instant claim is substantially similar to subject matter presented in claims 4-5, and is rejected for substantially similar reasons.

With regard to claim 39, Murto as modified by Nielsen teaches that each of the distributed services provide a service that matches the specified criteria (Murto: Paragraph [0017]) such that any of the distributed services is interchangeable with another of the distributed services (First, it is noted that there is no clear limitation as to what constitutes "interchangeable." Interchangeable could simply mean that it could be used as opposed to another service, not necessarily for the same function. Second,

Art Unit: 2144

this appears to constitute the intention of having the service match specified criteria. Thus, this appears to have questionable weight. This phrase should be amended to clearly demonstrate what is meant by "interchangeable" and to have the phrase clearly limiting the method, such as by having the interchangeability expressed as an additional step.).

Claim Rejections - 35 USC § 103

4. Claims 11-13, 15, 24, and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Murto in view as modified by Nielsen, as applied to claims 1-10, 14, 17-23, 25-33, and 35-39, and further in view of Official Notice.

With regard to claim 11, Murto as modified by Nielsen teaches the invention as substantially claimed except basing the ordering on quality of service data.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is well known in the art.

The Applicant is entitled to traverse any/all Official Notice taken in this action according to MPEP §2144.03. However, MPEP §2144.03 further states "See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, *In re Boon*, 169 USPQ 231, 234 states "as we held in *Alhert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of this assertion. We did not

mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed." Further note that 37 CFR §1.67(c)(3) states "Judicial notice means official notice." Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

It would have been obvious to base the order on quality of service data.

The suggestion/motivation for doing so would have been that Murto provides for ordering of items on the list based on user preferences (Murto: Paragraph [0170]). Allowing the list to be sorted based on quality of service parameters (e.g. reliability or current status) allows the user to give preference to service providers that are capable of providing the services at an acceptable reliability.

With regard to claim 12, Murto as modified by Nielsen teaches the invention as substantially claimed except choosing the access point based on the ordering comprises choosing the access point that is first in the ordering of those access points that have not been marked as having failed.

However, Official Notice (See MPEP §2144.03) that this functionality was well known in the art.

It would have been obvious to select the access point that is first in the list that has not been marked as having failed.

The suggestion/motivation for doing so is that the list of Murto is sorted based on user preferences (Murto: Paragraph [0170]). As such, the top item would be the closest match to the desired settings of the user. Further, it would not make sense to choose

Art Unit: 2144

the top access point in the list if it is known to have failed, so the first access point that is not known to have failed would be the access point that is closest to the user's preference that can be accessed by the user.

With regard to claim 13, the instant claim is substantially similar to subject matter presented in claim 12 (the "access point that is next" is interpreted as being the first access point, as in claim 12), and is rejected for substantially similar reasons.

With regard to claim 15, Murto as modified by Nielsen teaches the invention as substantially claimed except updating the service registry based on failure data.

However, Official Notice (See MPEP §2144.03) that this functionality was well known in the art.

It would have been obvious to update the service registry based on the failure data.

The suggestion/motivation for doing so would have been that if an access point fails, the registry would still advertise the access point as having the service (and presumably be available), while the access point is, in fact, unavailable. Thus, having a mechanism to mark the access point as failed or remove the access point from the registry would allow the service registry to advertise only those access points that are believed to be active.

With regard to claim 24, Murto as modified by Nielsen teaches the invention as substantially claimed except that the client program hosts the manager component.

However, according to MPEP 2144.04 VI, the mere rearrangement of parts (e.g. the location of the manager component) may be an obvious matter of design choice.

It would have been obvious to a person of ordinary skill in the art to choose to have the manager component hosted on the client program rather than on a separate system.

The suggestion/motivation for doing so would have been that the client would have a local cache, and would not have to rely on a separate server to perform the caching and request operations. Rather, the client could directly retrieve the information on the location of the access point that was previously retrieved (possibly as part of a previous request), and access the service using that information. This would increase the efficiency of the system of Murto for the single client.

With regard to claim 34, the instant claim is substantially similar to subject matter presented in claims 15 and 18, and is rejected for substantially similar reasons.

Response to Arguments

5. Applicant's arguments with respect to claims 1-39 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Christensen whose telephone number is (571)270-1144. The examiner can normally be reached on Monday through Thursday 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2144

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul H Kang/
Primary Examiner, Art Unit 2144

/S. C./
Examiner, Art Unit 2144